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March 4, 2002

**VIA COURIER**

William F. Caton, Acting Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

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MAR - 4 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Comments of Birch Telecom of the South, Inc. on Joint Application of BellSouth Corporation *et al.* to Provide In-Region, InterLATA Services in Georgia and Louisiana (Docket No. CC 02-35)/

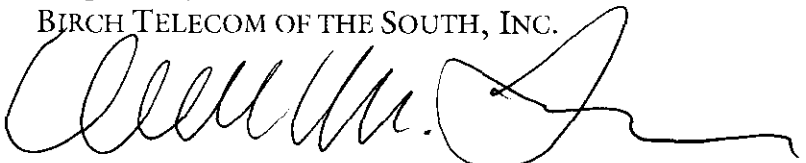
Dear Mr. Caton:

On behalf of Birch Telecom of the South, Inc. ("Birch"), we hereby enclose an original and two (2) copies of the redacted version of Birch Telecom of the South, Inc.'s Comments in the above-captioned proceeding.

Please note that Birch is filing the confidential portion of the submission and a redacted version of the entire submission in this docket. In accordance with the Commission's *Public Notice*, DA 02-337 (released February 14, 2002), these documents are being filed under separate cover.

Please direct any questions concerning this filing to the undersigned at (202) 833-5017.

Respectfully submitted,  
BIRCH TELECOM OF THE SOUTH, INC.



By \_\_\_\_\_  
Valerie M. Furman

VMF/clh  
Enclosures

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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 02-35

In the Matter of )  
Joint Application by BellSouth )  
Corporation, BellSouth )  
Telecommunications, Inc. and )  
BellSouth Long Distance, Inc. )  
For Provision of In-Regions )  
InterLATA Services in Georgia )  
and Louisiana )

COMMENTS OF BIRCH TELECOM OF THE SOUTH, INC.

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and Louisiana )

COMMENTS OF BIRCH TELECOM OF THE SOUTH, INC.

Birch Telecom of the South, Inc. ("Birch") files these comments pursuant to the Public Notice (DA 02-337) issued February 14, 2002, seeking comment on BellSouth's application for Section 271 in-region long distance authority for Georgia and Louisiana ("Application"). Birch respectfully requests that its initial and reply comments and subsequent ex parte documents, previously filed in CC Docket No. 01-277, be incorporated herein by reference.

**I. INTRODUCTION**

"BellSouth has now done exactly as it has promised."<sup>1</sup> Birch only wishes it could support that statement by BellSouth. Unfortunately, upon a review of the evidence provided by BellSouth to support its assertions with respect to the key issues left unresolved at the time of BellSouth's withdrawal of its previous Georgia/Louisiana application on December 20, 2001 (CC Docket No. 01-277), Birch cannot attest that BellSouth has satisfied Birch's concerns nor the concerns of this Commission. In fact, Birch must report that the evidence provided herein by BellSouth, with respect to Birch, is either incomplete or misleading – again.

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<sup>1</sup> Supplemental Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 02-35, p. 1, February 14, 2002 ("Supplemental Brief").

During the brief interval between BellSouth's withdrawal of its initial application and the filing of the current application, Birch has achieved engagement by BellSouth on a variety of issues. Birch will in fact report improvements in several areas addressed during that timeframe. However, such engagement and improvements have been limited in scope, and have been experienced for only a short period of time. That is, Birch cannot confirm that BellSouth's progress is sustainable over time. Witnessing such improvements and progress in the wake of a 271 application by a Regional Bell Operating Company ("RBOC") is not uncommon. Attaining a level of confidence that an RBOC's performance and behavior is sustainable in a post-271 environment has proven to be the exception rather than the rule, given the few states in which RBOCs have been approved to provide in-region interLATA services. Birch has no such level of confidence today, just as it did not in December 2001.

Truth be told, Birch had hoped that it would have an opportunity to further engage with BellSouth on the problems Birch identified in its comments and ex partes filed in connection with BellSouth's prior application, for at least a solid ninety-day period. At the conclusion of that interval, Birch had hoped to raise its level of confidence in BellSouth and its operations, at least to a level that would have yielded Birch's support of this re-filed application. Although on a positive path toward that end, Birch was surprised, and disappointed really, when BellSouth filed this application on February 14, allowing just 55 days in between the former and current applications. As the Commission is well aware, Birch is not afraid to take the "regulatory high road" and support an RBOC's 271 application if its experience produces a level of confidence that a viable operational framework exists within which a Competitive Local Exchange Carrier ("CLEC") has a meaningful opportunity to compete with its vendor/competitor.<sup>2</sup> In fact, Birch prides itself on playing the role of "honest broker" to the regulator.

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<sup>2</sup> Birch supported SBC-Southwestern Bell's 271 Applications in Kansas, Oklahoma and Missouri.

It is in that spirit that these comments have been developed. Quite frankly, Birch is not only disappointed in BellSouth's haste to re-file this application prematurely, but that BellSouth has again chosen to distort the evidence to support its request for 271 approval. After reviewing and analyzing the evidence presented by BellSouth herein, it is difficult to conclude that BellSouth's recent engagement with Birch was motivated by a genuine intent to become a better vendor or better operationally. Rather, it is much easier to conclude that BellSouth's attempts were merely intended to pacify Birch until BellSouth has gained 271 approval from this Commission. There is no evidence to support the sustainability of BellSouth's roughly 50 days worth of progress in a post-271 environment. Birch therefore implores the Commission to scrutinize the instant application to the same degree as the previous one. Birch asserts that some of the exact same deficiencies that caused the withdrawal of the previous application are present herein.

## **II. SERVICE ORDER ACCURACY**

### **A. Joint Quality Assurance Efforts**

In its comments on BellSouth's previous application, Birch reported that the flow-through rate it actually experienced in the BellSouth region, contrary to the data then presented by BellSouth, was in the 55-65% range. Further, Birch presented evidence that it was experiencing a nearly 30% service order error rate on the 45-55% of its orders that fall out of BellSouth's systems and which require manual handling.<sup>3</sup> On December 12, 2001, just eight

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<sup>3</sup> BellSouth's Supplemental Brief, at pages 23-24, describes BellSouth's systems as "highly mechanized." However, BellSouth also presents evidence that manual intervention is still very prevalent to handle Birch's simple set of UNE-P orders. Attachment SVA-53 outlines the volume of Birch orders from September through December 2001, and the manner in which BellSouth handled Birch's orders. Specifically, BellSouth shows that in September, 54% of Birch's orders were manually handled (partially mechanized orders divided by total of partially mechanized orders and fully mechanized orders), October was 50%, November was 47% and finally, 45% for December. BellSouth's purpose for SVA-53 was to calculate a service order error rate on Birch's orders. Birch is unable to verify BellSouth's calculations as no detailed data was presented in support of BellSouth's findings.

days before BellSouth was forced to withdraw its previous Application, the BellSouth Local Carrier Service Center (“LCSC”) informed Birch there was less than a 2% service order inaccuracy rate in BellSouth’s provisioning of manually handled Local Service Requests (“LSRs”).<sup>4</sup> BellSouth also informed Birch that since September 2001 BellSouth had been evaluating service order accuracy through a “Service Order Review” team. Unfortunately, only five service orders per representative/per month were being examined for quality.

In an effort to prove to BellSouth that a crippling and costly issue was evident in its provisioning process, Birch requested that BellSouth participate in a joint reconciliation of manually handled LSRs to validate service order accuracy. Birch crafted specific and measurable rules of engagement to perform the reconciliation, which was jointly agreed upon by the companies.<sup>5</sup> Through an intensive three-day sampling period (12/17-20/2001), 121 LSRs were sampled and BellSouth service orders were reviewed for accuracy. Although an improvement over the Birch-reported result of a nearly 30% error rate, the reconciliation revealed that BellSouth had inaccurately generated over 16%<sup>6</sup> of the associated service orders which would have led to end-user service impacting situations if the errors had not been discovered through the reconciliation. It is important to highlight that during the reconciliation, it was determined that Birch created only one ordering error out of the 121 LSRs. The results speak for themselves: improvement is achieved when significant focus is placed upon an issue, but no

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<sup>4</sup> There can be no question that BellSouth directed the “Service Order Review” team to Birch’s concerns regarding service order error rates. Indeed, the December 13, 2001 engagement with Birch was clearly an “11<sup>th</sup> hour” attempt to persuade this Commission that it had rectified the service order accuracy problems experienced by Birch.

<sup>5</sup> Attachment 1 reflects the guidelines agreed upon between Birch and BellSouth to govern the joint reconciliation effort (Joint Quality Assurance Project Plan).

<sup>6</sup> Attachment 2 contains the final results of the 12/17/01 Birch/BellSouth Reconciliation of Service Order Accuracy errors. It also includes a Birch and BellSouth order inaccuracy rate. Birch asserts a 16% error rate while BellSouth’s view is a 12% error rate. Inherent during the joint reconciliation, Birch and BellSouth “agreed to disagree” on certain sample PON errors, due to timing differences of when the Service Order Completion order was reviewed.



evidence of sustainability is rendered. It is evident that BellSouth was either unaware or chose to ignore the severity of the self-inflicted service order error problem until 271 scrutiny forced the parity implications associated with it to be brought to light.

Birch agreed to perform a second joint reconciliation effort in order to give BellSouth an opportunity to implement manual accuracy improvement measures. Prior to the second reconciliation, conducted on 02/06-07/2002,<sup>7</sup> BellSouth informed Birch that 100% of Birch's service orders were being reviewed for quality prior to order completion. Reportedly, 5-10 dedicated representatives within the BellSouth Service Order Review team performed this quality check. Not unexpectedly, the second sampling of 57 LSRs resulted in less than a 2% service order error rate for the manually handled service orders. Less than three weeks later, a third joint reconciliation of 60 orders was performed over a two-day period (2/25-26/2002). The manual order error rate from this third reconciliation was slightly higher, at 8%.<sup>8</sup> To more closely monitor BellSouth's manual order provisioning error rate, Birch has jointly agreed to perform a monthly reconciliation, at a minimum, or more often if deemed necessary.

#### **B. BellSouth's Promises for Resolution**

The BellSouth JCSC Director informed Birch that BellSouth would eventually add headcount to the Service Order Review team and perform scalable quality reviews on all CLEC service orders, not just for Birch. Additionally, the scalability would not involve checking 100% of the orders, but rather 35-40 orders/per representative/per month. While Birch commends BellSouth's efforts to improve its service order error rates, including its representations of devoting additional resources, these speculative improvements are not valid evidence that

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<sup>7</sup> Attachment 3 contains the final results of the 02/06/02 Birch/BellSouth Reconciliation of Service Order Accuracy errors.

<sup>8</sup> Attachment 4 contains the final results of the 02/25/02 Birch/BellSouth Reconciliation of Service Order Accuracy errors.

BellSouth's service order error rates are to a manageable level or even sustainable past tomorrow.

BellSouth only allocates resources to a problem when trying to make its 271 case, and backslides once the spotlight has been redirected. BellSouth's proposed improvements may sound like effective solutions in theory, but the reality is that BellSouth's solutions will only work in practice when they are actually implemented *and* sustained. BellSouth has failed to implement a sustained solution to its service order error problem since Birch began operating in the BellSouth region in late 2000. Further, the minor progress reported herein, when BellSouth devotes strict attention to Birch's orders, does not prove any sustainability or that an effective global solution has even been put into motion, let alone proven to fix the problem. While the ultimate improvement or "fix" for the service order error inaccuracies would be increased mechanization, BellSouth has shown no ability to accomplish the same, nor a desire to even try. Birch is willing to evaluate whether BellSouth's proposed resolutions will be sustainable over time, but has no choice but to remain skeptical about any success due to BellSouth's past behavior and extreme haste to sway this Commission with incomplete or invalid evidence. Short of this Commission being presented valid, consistent evidence that BellSouth's improvements have been implemented *and* have yielded consistent, improved levels of service order accuracy performance, BellSouth cannot be deemed to have assuaged the concerns of both the Department of Justice and the Commission with respect to BellSouth's previous Application.

**C. Performance Measurement Implications for Service Order Accuracy**

There is no question that service order accuracy is one of the most critical issues that has remained unresolved in BellSouth's bid for 271 authority in Georgia and Louisiana. In

the previous Application, Birch undertook an exhaustive effort to prove BellSouth's failures in the service order accuracy area and the inefficiencies and economic burdens experienced by Birch as a result. BellSouth has touted improvements not only to its quality review process (see discussion in Section II A & B above), but also with its "voluntary" commitment to include the Service Order Accuracy measurement in the Georgia Self Effectuating Enforcement Mechanism ("SEEM") Plan so that a penalty attaches if the measurement is missed. Birch has analyzed both aspects of BellSouth's reported improvements. Birch's conclusions regarding BellSouth's quality review process enhancements are discussed in the previous sections. This section will sift through BellSouth's "spin" regarding its purported performance measurement related improvements made concerning Service Order Accuracy, and provide the Commission the truth (realistic implications) with respect to the same.

As reflected in Mr. Varner's Supplemental Affidavit, BellSouth recently made substantial changes to the Service Order Accuracy measurement.<sup>9</sup> The changes to the measurement included broadening the base of sampled orders to include fully mechanized orders as well as the addition of orders created on a region-wide basis. Additional changes to the measurement also included different disaggregation and a shift from reporting based on the number of LSRs to reporting based on the number of sampled service orders.

Although Mr. Varner asserts that these changes were made to "increase the likelihood of a statistically valid sample,"<sup>10</sup> Birch asserts that BellSouth made its calculated changes to simply redesign the measurement to a manner so that BellSouth will likely never perform in a manner that does not meet or exceed the established benchmark (the benchmark being one of the few things about the measurement that BellSouth did not try to change). The

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<sup>9</sup> *Supplemental Affidavit of Alphonso L. Varner*, ¶¶ 63-68, February 14, 2002 ("Varner Aff.").

<sup>10</sup> *Id.* at ¶ 64.

addition of fully mechanized orders to the measurement completely skews the sample, as fully mechanized orders should very rarely contain service order errors (based on the premise that electronic transactions use the exact information provided by CLECs to create BellSouth's legacy service orders and thus removes the possibility of human error). Increasing the sample order universe to include fully mechanized orders should create immediate suspicion as to the true intent behind BellSouth's performance capturing adjustments.

Just as concerning as BellSouth's complete "retooling" of the measurement, is the fact that BellSouth unilaterally determined that the measurement should be changed. Birch, the Department of Justice, and other commenters in opposition to BellSouth's initial application argued that several of the BellSouth performance measurements were fundamentally flawed, but BellSouth has specifically indicated that all performance measurement changes should be addressed through the Georgia and Louisiana Commissions' six-month review process.

Some commenters dispute that contention, on the theory that many of BellSouth's measures are not properly designed, and others of them have been improperly implemented. *See, e.g., AT&T Bursh/Norris Decl.* ¶¶ 36-75; *WorldCom Comments* at 47-48. In the first place, however, this is simply the wrong forum in which to press these concerns. Both the Louisiana and Georgia PSCs have established six-month review processes to address precisely these sorts of issues. The comprehensive, collaborative reviews called for by these state commissions are plainly the best fora for considering modifications to BellSouth's existing measures.<sup>11</sup>

Double-talk, as only perfected by an "eager to please this Commission RBOC," again plagues BellSouth in this application.

At the precise time that BellSouth felt the need to unilaterally change the Service Order Accuracy measurement, CLECs, BellSouth, and the Georgia Commission staff were

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<sup>11</sup> *See Reply Affidavit of Alphonso J. Varner* ¶ 124 (Reply App., Tab S), November 13, 2001 (Final internal footnote omitted).

engaged in the collaborative six-month review workshops discussing changes to the Georgia performance measurements.<sup>12</sup> In fact, the Service Order Accuracy measurement was discussed in great detail. Not once did BellSouth indicate to participants that the measurement was undergoing significant changes. Not even during workshops held December 12-14, 2001 (after the change had occurred and in which the service order accuracy measure was discussed) did BellSouth disclose the change. An additional clarification to ensure that only LSRs that were manually handled would be included in the sample was a key change proposed by CLECs, including Birch, during the six-month review, to this measurement.<sup>13</sup> This additional clarification to ensure that only LSRs that were manually handled be included in the sample for this measurement was added to the SQM working document controlled by the Georgia PSC Staff in workshops held November 7-8, 2001. While the working document referenced was by no means a final Georgia PSC order, it should have been enough to persuade BellSouth not to change the measurement on its own accord. The fact that BellSouth did so anyway is a further indication of its failure to progress in a collaborative spirit, causing Birch to continue to distrust BellSouth's motives.

BellSouth's habit of making unilateral and unauthorized changes to performance measurements undermines the credibility in which it produces performance measurement data. The changes also make evaluation and verification of BellSouth performance reporting very difficult, as results may or may not be comparable from month to month. Comparing BellSouth's service order accuracy results from September through December is very misleading, as the core of the measurement changed in November. One does not have to look

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<sup>12</sup> The first session of the Georgia six-month performance measurement review workshops was held on October 17-18, 2001.

<sup>13</sup> See *In Re Performance Measures for Telecommunications, Interconnection, Unbundling and Resale*, Comments of Birch Telecom of the South, Inc., Measurement P-11, Docket No. 7892-U September 10, 2001.

further than the flow-through measurement and data, at issue in BellSouth's initial Application, to find other examples of BellSouth's attempts to report better performance through arbitrary changes to measurements (without disclosing such changes to users of the performance data). At this rate, BellSouth will continue to manipulate the way in which it captures performance measurement data, or the performance measurements themselves, until it satisfies its 271 objectives, without regard to whether the changes are justified, discussed at collaborative workshops or approved by any regulatory body. This behavior is nothing short of disingenuous.

Finally, BellSouth has "voluntarily" added the Service Order Accuracy measurement to the SEEM plan, as of January 2002. Birch applauds BellSouth for the commitment to service order accuracy by adding this measurement to the SEEM plan. Unfortunately, this change is overshadowed by the fact that BellSouth has subjectively changed the measure in a manner that will be very difficult to miss, due to the inclusion of highly accurate mechanized orders. Birch has remained true to one very important principle from the time it filed its first set of comments on BellSouth's 271 Application at the state level: Birch would rather achieve operational efficiency and excellence than even a dollar in performance remedy payments. It is not Birch's intent to design measurements for which BellSouth has the chance of missing, but rather design measurements that accurately measure critical performance. This Commission must agree with Birch that measuring the accuracy of orders that are never touched by human hands is an irrelevant exercise because there has never been an issue with accuracy of these types of order. Thus, BellSouth's purported improvements, concessions and "voluntary" commitments with respect to service order accuracy will not have quite the impact that BellSouth has portrayed. Again, it is a different chapter from the same book – a chapter that Birch implores this Commission to once again scrutinize for veracity and intent.

**III. Flow-Through of UNE-P Orders**

**A. Pending Improvements to the Georgia Performance Measurement Framework May Bring UNE-P Flow-Through to the Proper Benchmark Level**

The prior record in this proceeding indicates a number of material concerns raised by Birch regarding the Performance Measurement framework currently in place in Georgia. During the timeframe in which the prior record was compiled, the Georgia PSC conducted its initial six-month collaborative review of the Georgia SEEM Plan, and there have been a number of significant improvements that came out of this review that are documented, filed, and currently pending Georgia PSC action.<sup>14</sup> One of the most significant proposed modifications is in the area of UNE-P flow-through. Specifically, the six-month review yielded a recommendation to increase BellSouth's benchmark level performance for UNE-P orders from 85% to 95%.<sup>15</sup> This is a noteworthy improvement from the prior state of affairs, in that Birch demonstrated in the prior record that an 85% benchmark level of UNE-P order flow through was clearly deficient, compared to other applications that have been approved by the Commission.<sup>16</sup> If and at such time as this revised benchmark is mandated by the Georgia PSC, and if and at such time the revised benchmark is successfully and accurately implemented by

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<sup>14</sup> Six-month collaborative review workshops were held in Docket No. 7892-U on October 17-18, November 7-8 and December 12-14, 2001.

<sup>15</sup> The UNE-P flow-through measure captures (as the numerator) the actual, achieved level of UNE-P orders that "flow-through" or move through BellSouth's provisioning process in a fully mechanized manner as a percentage of those orders that are designed to flow through (as the denominator). This excludes CLEC orders that fall out for clarification reasons, and excludes those CLEC orders that are "designed" to fall out i.e., not supposed to flow through. The six-month collaborative review workshop "working document," currently under advisement by the Georgia Public Service Commission Staff indicates that the benchmark, or success bar, be set at 95%.

<sup>16</sup> See Comments of Birch Telecom of the South, Inc. at pp. 25-26, CC Docket No. 01-277, October 22, 2001 ("Initial Birch Comments").

BellSouth, Birch's concerns regarding consistency with other successful 271 applications at the FCC will be largely satisfied.<sup>17</sup>

**B. BellSouth Has Yet to Demonstrate Success in the Area of UNE-P Order Flow-Through**

While it appears that matters are "on track" to establish an appropriate benchmark level of performance for UNE-P flow-through in Georgia, BellSouth's actual performance – under either the old *or* the pending new benchmark – is a different matter altogether.

Suffice it to say that the performance measurement results – particularly for this measure – that accompanied BellSouth's initial submission to the FCC in this proceeding, was dubious at best.<sup>18</sup> In the subsequent months, results have shown some improvement in the aggregate flow-through percentage, with January 2002 showing an aggregate flow-through percentage of 85.50%, which for the first time ever, exceeds the current benchmark flow-through level. While BellSouth may claim that they "finally made it," Birch would point out that one month of exceeding the 85% benchmark performance level can *hardly* constitute a convincing case by BellSouth. Moreover, with the likely increase of the benchmark level of performance to 95% to make the measure consistent with the same component of other successful 271 applications, BellSouth has still never achieved nor has ever proven that it is even capable of achieving the required level of performance in the area of UNE-P flow-

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<sup>17</sup> Note, however, that this improvement is pending in Georgia only. Bell South should be required to first voluntarily incorporate this revised benchmark prior to the grant of interLATA authority by this Commission in *any* BellSouth state.

<sup>18</sup> See Birch December 12, 2001 *Ex Parte* filed in CC Docket No. 01-277.



through.<sup>19</sup> Birch's discomfort regarding a level playing field in a post-271 environment in the BellSouth region only grows.

**C. BellSouth Continues to Fail in its Focused Attempts to Improve Flow-Through of Birch Orders**

Birch certainly understands that the Commission cannot really concern itself with individual company flow-through results, in and of themselves, as a gauge of BellSouth's aggregate ability to meet or not meet a particular checklist item. However, Birch's specific experience continues to be a concern, both from an actual results standpoint (still in the low to mid 70s%) and from the prospect of improving its flow-through percentage going forward. With respect to Birch's inability to even approach the current, lower benchmark level of 85% for flow-through performance, Birch reiterates that it is not ordering a complicated set of services at this time. Birch has purposefully limited its orders to basic business dial tone, plus a set of vertical features, and multi-line hunting on a subset of the orders. The fact that Birch's orders are so simplistic – much more so than the market demands – renders startling the fact that flow-through success remains elusive.

Since mid-2001, Birch has requested that BellSouth explain why Birch experiences such low flow-through rates, and to provide actionable solutions to root cause problems. In July 2000 BellSouth presented Birch with a Flow-Through Action Plan to assist in increasing electronic provisioning, improving flow-through results and reducing clarifications. The plan specifically addressed incremental improvement in flow-through and clarifications over a five-month period. Further, the plan contained the stated goal of a 5% improvement per month with a target of 95% to be attained through December 2001. However, the plan did not

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<sup>19</sup> See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Red 3953, ¶ 68 (1999).

provide specific guidance on how BellSouth would be addressing BellSouth-caused flow-through issues. Not surprisingly, Birch's flow-through stagnated in the 60% range and has never improved to the 95% level outlined by BellSouth in the Action Plan, despite Birch successfully addressing the improvements outlined for Birch in the Action Plan. For the months subsequent to the execution of this initial Flow-Through Action Plan, there was literally no material improvement in Birch's flow-through results. As a result, the first attempt at improvements by BellSouth must be properly characterized as an exercise in form over substance.

Since December 2001, Birch and BellSouth have engaged in some very focused and fruitful dialogue on Birch's particular points of pain. One area that has received a high level of attention is in the improvement of Birch's order flow-through rates. On December 13, 2001, Birch requested a new Flow-Through Action Plan for 2002. BellSouth originally committed to providing this Action Plan in January 2002. However, Birch was later told it would receive the Action Plan "sometime during First Quarter 2002."<sup>20</sup> Birch awaited this second Plan with great anticipation because of the very specific emphasis and commitment, at the highest levels of BellSouth, placed on improving flow-through levels. On February 18, 2002, four days *after* this supplemental application was filed, Birch received a draft of the 2002 Action Plan. Beyond belief, flow-through improvement is barely mentioned in the 14-page document.<sup>21</sup> Needless to say, Birch is extremely disappointed to report that the 2002 Action Plan offers nothing of

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<sup>20</sup> The fact that BellSouth could not make a specific commitment to Birch, especially with the flow-through problems at issue in its 271 proceeding, is further evidence of BellSouth's unwillingness to address its wholesale customers' concerns in a timely fashion.

<sup>21</sup> Attachment 5 is the "Birch Telecommunications Revised Action Plan" ("Flow-Through Action Plan") referred to herein." It is evident from the document that BellSouth has no real intent to address Birch's flow-through issues, and certainly no intent to resolve them to the extent BellSouth can.

substance in the way of actionable solutions that address root cause problems on the BellSouth side of the transaction.

Since the inception of the Georgia PSC Flow-Through Task Force in early 2001, CLECs have assisted BellSouth in identifying and prioritizing key flow-through issues. Additionally, BellSouth has performed analysis and identified key BellSouth system caused errors. The bottom-line is that results that actually resolve flow-through errors and the scheduling of flow-through requests for releases has been far less than stellar. Through the Flow-Through Task Force, BellSouth has identified several BellSouth-caused back-end system errors that are causing LSRs to not flow through.<sup>22</sup> Contained within the 2002 Action Plan, BellSouth only mentions one error code that has been scheduled for an upcoming release. Additionally, BellSouth states that adding employees to the Jacksonville Service Center will help improve mechanized flow through. Birch does not quite understand, however, how adding representatives to answer phones in the Jacksonville Center will assist Birch's flow-through improvement. Surely, resolving one error will not improve Birch's flow-through rate by 30%. Birch has no confidence that BellSouth even understands why Birch orders are not flowing through at 95% or greater. Nor is there any evidence that BellSouth can sustain or has the incentive to sustain such levels of flow-through. Birch has requested a specific outline of BellSouth-caused system flow-through errors that will be resolved in upcoming 2002 releases, and that apply to Birch's flow-through fall out. Additionally, Birch has requested a joint evaluation of flow-through and clarification data on a weekly or bi-monthly basis.

Clearly, Birch is doing more than its fair share to help evaluate root causes and jointly develop resolutions. The reality is that BellSouth is the only party that controls whether any system resolutions are ever implemented. Perhaps the most disturbing aspect of this entire

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<sup>22</sup> Examples include Error Codes 8825, 7710, 7115, 7465, 7645, 7718, 8820, and 7630.

process was to discover BellSouth's admission that some BellSouth-caused system errors "would never be eliminated totally."<sup>23</sup> This is indeed disturbing as it would seem clear that full mechanization is the high leverage "fix" that alleviates a multitude of other problems inherent in the manual process. Until BellSouth is able to deliver on its promise to improve things with respect to its inherent system problems that yield unacceptably low flow-through rates, this 271 Application should not move forward. Alternatively, this Commission should clarify in no uncertain terms its expectations that BellSouth will step up and put its corporate "money where its mouth is" and deliver flow-through improvement results to Birch – as it has promised to do.

#### **IV. OSS ISSUES**

##### **A. Short Duration OSS Outages Significantly Impair Birch and Go Unnoticed, Un-addressed and Unreported by BST**

Birch has consistently experienced a variety of system interruptions to BellSouth's primary provisioning platform.<sup>24</sup> In the past, Birch has solicited the assistance of Change Control to perform a root cause/explanation of the reported outage patterns with TAG (Telecommunications Access Gateway), LENS, other applications. BellSouth's response to such inquiries was that such a request does not fall within the responsibilities of CCP. In addition, Birch has also presented the system outage issue to its BellSouth Account Team and asked the team to provide a detailed explanation of BellSouth's short and long-term strategy for system stability and integrity. To date, Birch has yet to receive a response, although it will not be a surprise if Birch receives this long awaited response prior to May 15, 2002, the date by which this Commission must render its 271 verdict for BellSouth.

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<sup>23</sup> See Attachment 6, which contains the January 17, 2002 Flow-Through Task Force Meeting Minutes, Release Schedule at p. 3.

<sup>24</sup> See *Initial Birch Comments* at pp. 28-30.

From a Change Control perspective, BellSouth only tracks and reports on system outages that are greater than 20 minutes. This policy prevents BellSouth from clearly analyzing and determining patterns of short duration (i.e. less than 20 minute outages and other system deficiencies). A good case in point is that BellSouth officially reported 16 outages through the months of December 2001 – February 2002, while Birch's provisioning center reported over 50 incidents of slowness, loss of functionality and short interval downtime to Birch's internal Help Desk. Although each incident has been less than 20 minutes with most incidents being less than 5 minutes, each occurrence of such an incident not only brings the system down, but also causes Birch's entire production- driven provisioning center to come to a halt.<sup>25</sup>

On February 1, 2002, Birch submitted a request to BellSouth's OSS Support Team, specifically dedicated to Birch. Birch solicited assistance to determine the root cause and resolution of a pattern of slowness, loss of functionality and short interval downtime with the provisioning platform. The root cause points toward the BellSouth's TAG system and the reoccurrence is predictably at the end or the last week of each month. It should not be surprising that the end of the month is the most active and important week for Birch (and certainly other CLECs) to input and shore up orders prior to the month's end.

BellSouth's OSS Support Team was extremely responsive and immediately fashioned a "Systems Improvement Action Plan" for Birch and implemented a study (2/19-3/15/2002) to document all system incidents. Predictably however, BellSouth identified what has been classified as a "resource constraints" problem within just *five business days* of the establishment of this Action Plan for Birch. Birch has requested additional explanation as to the root cause, has yet to receive response, but has been informed that BellSouth is not yet prepared to disclose the details requested.

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<sup>25</sup> Birch has estimated that each incident equates to 30 minutes of lost production time per provisioning representative.

The processes implemented to assist Birch, therefore, are rather circular in nature. Although BellSouth appears as though it is being responsive to Birch's outage experiences with BellSouth's OSS, things are not always they appear. Birch feels as though its very pointed requests for a root cause analysis of the consistent system outages it experiences, at critical times during a month, have been buried somewhere in BellSouth's bureaucratic vacuum. If there are not effective resolutions to systemic OSS problems in place in a pre-271 environment,<sup>26</sup> the likelihood of BellSouth addressing and resolving these issues in a post-271 environment becomes nil. Birch cannot stress this enough. The "resource constraints" problem has yet to be resolved.<sup>27</sup>

#### **B. Jeopardy Notification Process is Fundamentally Flawed**

In its initial comments regarding BellSouth's prior Application, Birch presented evidence that BellSouth was not transmitting appropriate Jeopardy notifications to Birch and presumably all CLECs.<sup>28</sup> In its reply comments, BellSouth indicated that it was by design that

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<sup>26</sup> This Commission is all too familiar with the Loop Maintenance Operations System, or LMOS, database that became a hotly contested issue in the recent SBC 271 Application for Missouri/Arkansas. Although identified by AT&T as a problem area in the Texas 271 proceeding, SBC was able to "spin" its way out of perceived negative impacts of the failure of the LMOS database to update in a timely fashion. Not until the second six-month Performance Measurement review in Texas did the LMOS database impacts become apparent. Although currently the subject of an audit conducted under the auspices of the Texas Commission, CLECs will never be able to truly recover all of the negative impacts the LMOS issue caused.

As the Commission can imagine, the pace at which an RBOC moves to rectify CLEC concerns in a post-271 environment never equals that achieved by an RBOC when under the FCC's microscope during the pendency of a 271 Application. Birch pleads with this Commission not to force Birch to deal with BellSouth's systemic OSS outages at a post-271 pace.

<sup>27</sup> Birch does note, however, that BellSouth has indicated that it was implementing a "fix" to what they believe to be a root cause of this pattern of slowness, loss of functionality, and short interval downtime with Birch's provisioning platform. This "fix" was to be implemented during the weekend of 3/2-3/2002. Birch has not had a chance to evaluate the effectiveness of the fix, but will do so in the future and will subsequently report its findings to the Commission.

<sup>28</sup> See *Initial Birch Comments* at pp. 22-23. Specifically, Birch pointed out that BellSouth had only transmitted No Access or Customer Not Ready Jeopardy responses.

## Redacted — For Public Inspection

Birch and other CLECs were only receiving the specific Jeopardy notifications.<sup>29</sup> BellSouth's design, however, puts CLECs at an information disadvantage when servicing CLEC end users. When Birch cannot inform customers in a timely manner of impacts that may affect the service Birch has committed to provide, Birch's service is discredited. This is especially true when such information is readily available, on a real-time basis, to BellSouth Retail.

Birch's specific concern is the actual Jeopardy<sup>30</sup> procedures (or lack thereof) employed by BellSouth. Currently, the only electronic Jeopardy notices BellSouth transmits to CLECs using OSS transactions are end user reasons such as "No Access to Customer Premise" or "Customer Not Ready." For all other classic Jeopardy scenarios (e.g. "Lack of Facilities" or "BellSouth Workload"), BellSouth does not transmit Jeopardy notices to CLECs. Rather, CLECs are required to search CLEC Service Order Tracking System ("CSOTS") in order to find if, when, and why the Jeopardy scenario has occurred. To further complicate this process, BellSouth only updates the CSOTS system accessed by CLECs once daily,<sup>31</sup> so when CSOTS is updated, the data has limited value (because the due date may have already been missed). The result is that CLECs are placed at a distinct disadvantage in accessing information that is available to BellSouth's Retail units on a real-time basis. Also, the fact that BellSouth does not transmit an electronic response to CLECs for many classic Jeopardy transactions means that CLECs cannot proactively monitor Jeopardy trends or detect discriminatory treatment by BellSouth.

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<sup>29</sup> *Reply Affidavit of Ken L. Ainsworth* at ¶¶ 20-22, November 13, 2001. BellSouth's rationale is that a Jeopardy notice is only sent to CLECs when a supplemental LSR is required to process a new due date. This approach, however, leaves CLECs at an information disadvantage (both real time and as a means to electronically track BellSouth performance).

<sup>30</sup> "Jeopardy" is defined as a notice that a service installation due date may be missed.

<sup>31</sup> *See* Reply Comments of Birch Telecom of the South, Inc., p. 16, CC Docket No. 01-277, November 13, 2001 ("Birch Reply Comments").

Thus, BellSouth's entire Jeopardy notification process for CLECs is fundamentally flawed. Realistically, Birch does not expect to operate in complete parity with BellSouth's Retail group. However, BellSouth's apparent design of its Jeopardy notification process is discriminatory on its face. Every installation BellSouth performs on behalf of a competitor gives an impression of how comparable that competitor is, from a service and credibility perspective, to BellSouth. If a customer's installation does not match the date and time promised by Birch, due to a BellSouth-caused reason, and that reason is not conveyed timely to Birch, then it is extremely unlikely that the missed due date will be able to be conveyed by Birch to its customer in a timely fashion. The result is that the customer's first impression of Birch is one of unreliability and an inability to make good on its commitments. The intricacies of the Jeopardy notification process do not matter to the customer. It is not the responsibility of the customer to decipher if Birch or BellSouth is to blame for a missed due date. Rather, Birch asserts that it is within the control of this Commission to mandate that BellSouth alter its Jeopardy notification procedures to ensure that such notifications are being transmitted to CLECs in real-time and in a nondiscriminatory fashion. This proceeding is the proper forum<sup>32</sup> in which to mandate the same, as BellSouth will have zero incentive to do so in a post-271 environment.

### **C. Double FOC Issue**

The fact that CLECs did not have parity access to requesting due dates, or more specifically, CLECs were receiving "Double FOC" transactions because of OSS defects in BellSouth's assignment of due dates, was a major concern of Birch in BellSouth's initial

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<sup>32</sup> As a matter of course, this requested change would typically be worked through the CCP. Due to the current backlog of CLEC-requested changes in the CCP, this important request would not be implemented in a timely fashion.



application. In the supplemental application, BellSouth presents evidence that a February 9, 2002 release resolved the due date calculation defects that stemmed from a June 15, 2001 OSS release.<sup>33</sup> While BellSouth deserves credit for finally fixing the due dates calculation errors (Birch can confirm that the “Double FOC” has been resolved for Birch LSRs), BellSouth significantly understates the duration of the due date calculation problems. In fact, Birch had not had parity access to due dates since Birch began placing production orders in December of 2000. Presumably then, the problem pre-dates Birch’s experience in the BellSouth region. During this prolonged duration, BellSouth tried and failed to fix the problem on many different occasions until the February 2002 release.

Although BellSouth finally resolved the “Double FOC” issue, the lingering effects and precedent of not resolving CLEC-affecting problems in a timely and quality manner remains. This Commission surely recognizes that this issue was only resolved because of the desperate efforts by the BellSouth Corporation to gain 271 approval and not necessarily because BellSouth wants to provide parity service to CLEC competitors. This same corporate attitude could essentially destroy competition in a post 271 environment. Both Birch and this Commission have witnessed other RBOCs’ corporate attitude adjustments throughout the 271 process. Sadly, Birch asserts that BellSouth has made no such adjustments to date.

#### **D. TN Migration**

One of the many issues discussed in BellSouth’s supplemental application is the implementation of Telephone Number (TN) migration (the ability to convert a customer’s retail service to UNE-P by only populating the end user’s telephone number(s) on an LSR). This topic has mainly been discussed between BellSouth and WorldCom, as WorldCom is the largest

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<sup>33</sup> Joint Supplemental Affidavit of William N. Stacy, Alphonso J. Varner and Ken L. Ainsworth at ¶ 145 (“Joint Affidavit”).

user of this functionality. In the supplemental application, however, BellSouth presents evidence which suggests that every UNE-P migration that has occurred since November 17, 2001 has utilized the TN migration functionality.<sup>34</sup> Birch would like to inform this Commission that BellSouth's claim is not entirely truthful.

At ¶ 47 of his Joint Affidavit, Mr. Stacy describes the transaction flow for TN migration. Specifically, Mr. Stacy states: "The TN versus Address transaction flow is as follows: if present and valid, the full address will be used to calculate a due date."<sup>35</sup> This indicates that if a CLEC continues to populate the end user address on migration LSRs, BellSouth does not utilize the TN migration functionality. Birch's migration LSRs fall under this category. Birch's ordering system (RoboTAG <sup>TM</sup> version 7.5) requires a Regional Street Address Guide ("RSAG") validated address to be populated before an LSR can be transmitted to BellSouth's OSS. This indicates that Birch's orders should not have been included as BellSouth evidence of successful TN migrations and that BellSouth's claim is overstated.<sup>36</sup> The fact that all UNE-P migrations did not use this functionality may also explain the lack of feedback from other CLECs. Birch continues to have no opinion on the success of BellSouth implementation of TN migration.

#### **E. Parsed CSRs**

In its supplemental application, BellSouth touts its successes with the ability to parse CSRs. In fact, BellSouth specifically mentions its successful testing with Birch, including

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<sup>34</sup> See *Joint Affidavit* at ¶ 55, stating that over 160,000 UNE-P migration requests submitted utilized this functionality. Also paragraph 57 pointing to SVA-61 which is a list of all CLEC orders claimed by BellSouth to be using this functionality, including all Birch Telecom conversion orders for the timeframe specified.

<sup>35</sup> *Id.* at ¶ 47.

<sup>36</sup> BellSouth's propensity to overstate its performance and/or functionalities is not a new concept to this Commission. In fact, the integrity of BellSouth's data has been attacked by many CLECs, including Birch, on many fronts in its initial application. Birch asserts that this example supports an effort by the Commission to continue to scrutinize BellSouth's data very closely.

Birch-specific data intended to support its proposition.<sup>37</sup> Birch finds it very intriguing that BellSouth chose to use Birch's parsed CSR testing as a "poster child" of its success, particularly given the extent to which Birch actually tested this BellSouth functionality. BellSouth's apparent "spin" that Birch comprehensively tested the parsed CSR functionality is simply an embellishment meant to sway this Commission. Birch only tested *four accounts* through the parsed CSR functionality, two were business and two were residence. Birch is therefore by no means a barometer by which to measure BellSouth's performance in implementing this functionality. Birch's only goal was to conduct a "Proof of Concept" test in conjunction with an internal software interface. The integrity of the individual CSR fields nor data were validated through Birch's testing process. Birch is not comfortable that the limited parsed CSR testing performed dictates the stability, integrity or scalability of the functionality. In fact, with the implementation of the parsed CSR functionality in release 10.3 (January 5, 2002), 14 different defects were discovered post implementation. If Birch had placed this functionality into production, it would be near worthless with the gamut of associated defects.

Birch must again reiterate its low level of confidence that BellSouth can actually test and implement a release functionality and *get it right the first time*. It is imperative that OSS changes are implemented expeditiously and accurately to prevent downtime and loss of functionality to CLECs. No matter what medium a CLEC's business plan utilizes to provision service to its end users, all CLECs are dependent on an RBOC's OSS in some fashion. The importance of the reliability of those systems to a CLEC's daily operations cannot be underscored enough.

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<sup>37</sup> *Joint Affidavit* at ¶ 66.

**V. CHANGE CONTROL**

**A. LENS Testing in CAVE**

In late 2001, BellSouth implemented minor changes to the LENS application, which resulted in significant complications and loss of functionality to Birch. As a result, Birch specifically requested that CLECs be afforded the opportunity to test LENS releases via the CAVE (CLEC Application Verification Environment) testing environment. On November 14, 2001, BellSouth announced that CLECs would be able to test LENS releases and enhancements in the CAVE environment. Birch applauds BellSouth's agreement to allow CLECs to conduct such testing. In fact, Birch took advantage of this new opportunity by becoming one of only two CLEC beta-test customers and conducted testing from January 29 – February 13, 2002. Birch successfully tested a total of 26 pre-order/order LSRs. Although Birch did experience successful testing, excellent results were expected because Birch was asked to test retroactively, using a test environment that had been rolled into production on January 5, 2002. Thus, this testing was geared for success by design. The real pre-release implementation test will be with the next release (Encore minor Release 10.4), in which CAVE testing will begin on March 11, 2002. At this time, Birch is uncertain how BellSouth will handle defects identified in the testing environment and whether such defects will be resolved the first time and prior to release implementation. Birch's intent is to drive BellSouth to improve its release process, establish a stable and comprehensive test environment, perform adequate positive/negative, regression testing in relation to the release requirements and diminish release discrepancies, system complications, and flow through obstacles.

This is but another example of steps toward improvement BellSouth has made, but the fruits of which have not been experienced for any length of time or on any consistent basis. It is only logical to allow such improvements an opportunity to either fail or succeed

before the 271 floodgates are opened for BellSouth. Birch's worst fear is that BellSouth will have no incentive to continue its progress once 271 authority is granted. If 271 is granted prematurely, all of the time and resource Birch has spent working toward positive operational improvements will be for naught. That is, without some consequence, BellSouth really will not have to finish what it started.

#### **B. Prioritization of CLEC Requests**

Simply stated, the BellSouth Change Control Process ("CCP") is ridiculously inefficient and ineffective. This is evident from the actual results and backlog of Change Request activity on BellSouth's plate. BellSouth has committed to targeting releases for what has been considered the "Top 15 CLEC Features" list in which all of these issues were prioritized for BellSouth's benefit on April 15, 2001. Also, BellSouth's definition of "targeted" means the planning work to include the request in the release is being performed, but this is not a final determination that the request will actually be included in the targeted release date. Of the Top 15 CLEC Features list: one has partially been implemented as of February 2, 2002; nine have actually been scheduled for a 2002 release; four others are "targeted" only; and the last one is awaiting clarification. Additionally, the backlog of Change Requests is ever growing. Currently, there are over 170 Change Requests, dating back to 1999, that are in a status other than "implemented" on the change control log (including the Top 15 list). In addition and extremely important to Birch, there are 22 flow-through related Change Requests, of which seven are "targeted" but not scheduled for a 2002 release.

Throughout daily interactions with the BellSouth Account Team, LCSC, CWINS and OSS Support, Birch is continually directed to utilize the CCP process for mechanical and also operational issues (i.e., Enhanced Jeopardy Notification Process, Directory Listing Process

Flow, LSR to Directory Publish, Retail DSL Removal). Birch is not averse to utilizing CCP and is not intentionally circumventing the process, but the churning black hole of CCP Change Requests does not increase Birch's confidence that resolution will emerge in a reasonable timeframe or with any degree of accuracy. Nor should it increase this Commission's confidence that BellSouth's Change Control Process is or will be an effective tool for CLECs to utilize in a post-271 environment.

Birch's recommendation for BellSouth's CCP boils down to two words: modify and simplify. Birch actively participated in the CLEC Coalition that combed through the current CCP working/governing guidelines and provided a variety of enhancements to the process. The modified Change Control Guidelines were filed with the Georgia PSC on January 30, 2002. BellSouth has only begun to consider utilizing changes presented in this documents at the February 27, 2002 Change Control meeting. Birch agrees with the primary enhancements presented in the document, which include:

- 1) Improved efficiency and timeliness in implementing Change Requests
- 2) Improved prioritization and sizing of Changes Requests
- 3) Broadened and clarified scope of the Change Control Process
- 4) Improved release testing process

It is imperative that BellSouth incorporate the CLEC proposed modifications in the red-lined Change Control Guidelines filed with the Georgia PSC. It is equally important that BellSouth expeditiously begin operating under the red-lined Guidelines prior to gaining 271 approval. Again, examples of potential improvements by BellSouth exist, but there is no tangible proof that the Change Control improvements have been or will be successful. Past history with BellSouth leaves Birch skeptical.<sup>38</sup>

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<sup>38</sup> Birch's concern is that BellSouth's intention is to do as little as necessary to improve the CCP. This concern stems from Birch's review of BellSouth's formal rebuttal to these changes that have been filed with the Georgia PSC and also included in BellSouth's *Ex Parte* filed on February 27, 2002 in this docket. Birch

## **VI. DSL Issues**

Although Birch did not present any information or evidence regarding any Digital Subscriber Line (“DSL”) issues in response to BellSouth’s initial application, Birch has investigated what it believes to be a pervasive problem and therefore addresses it herein.

### **A. “Phantom DSL USOCs”**

Birch has experienced a significant number of instances where a Birch seeks to convert a BellSouth Retail customer to a Birch dial-tone product, only to find that the customer has DSL on its account. Before converting a customer to a UNE-P CLEC, the DSL service must be removed from the end user’s retail account or the voice line with the DSL on it must remain with BellSouth.<sup>39</sup> It has become a regular occurrence that when Birch pulled a to-be-converted customer’s CSR, a DSL USOC (Uniform Service Order Code (such as ADL11) and corresponding FID Field Identifier (such as a Circuit ID) was present, but the end user would claim that they did not subscribe to DSL service nor were they being billed for it. Birch has dubbed this problem the “phantom USOC” issue. At this time, the CLEC is not allowed to drop the DSL USOC at the time of conversion. Thus, the end user is required to call BellSouth Retail to request that the USOC be removed.

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certainly does not expect a “carte blanche” acceptance of each and every improvement proposed in the CLECs’ Georgia red-line proposal, but relying on BellSouth to embrace *any* actions that lead to real improvement is unwarranted, to say the least. BellSouth’s CCP shortcomings were one of the stated concerns of this Commission prior to BellSouth’s most recent withdrawal. While the “give and take” between industry participants normally yields a proper and balanced final outcome, this outcome requires participants on all sides of an issue to be committed to real improvement. Given the bureaucratic and unproductive state of the BellSouth CCP today, real improvement cannot possibly have been BellSouth’s agenda thus far. BellSouth’s substantive rebuttal to the CLECs red-line proposals – despite this Commission’s concern with the CCP as it functions today – causes Birch to view BellSouth’s intentions with much skepticism.

<sup>39</sup> Birch would note the line splitting implications of this practice.

Clearly, most end users caught in this predicament are irritated by the request to make a phone call to have a service removed that they cannot even see on their bill. It goes without saying that Birch's credibility immediately becomes an issue. The end user's frustration is intensified and Birch's credibility again questioned when the call is placed to BellSouth to remove the phantom USOC only to have BellSouth Retail inform the customer that DSL is not on the customer's account. Birch routinely warns the end user that if they receive this response from BellSouth that an escalation to a supervisor is necessary. It is impossible to calculate the expense and inconvenience to the customer and to Birch when Birch's representative must spend time educating the customer about things such as "USOCs" and "CSRs," in preparation of the customer's call to BellSouth Retail.

If the customer is lucky enough to persuade BellSouth Retail that a problem exists, a disconnect order is placed to remove the USOC. This process can take anywhere from three days to two weeks *or* a call back to Retail because the order was either never placed or it was "hung up" in back office systems. Understandably, many end users would rather stay with the status quo than hassle with the removal of a service to which they have not subscribed, and in fact do not really have.

#### **B. DSL on Main Billing TN or Main Line of a Hunt Group**

If a customer truly subscribes to DSL service and wishes to retain it, then a voice line must remain with BellSouth in order to retain the DSL. Birch's investigation of this issue has revealed that BellSouth typically provisions DSL service on the main billing telephone number ("BTN") or the main line of a hunt group. In order to prevent the customer from losing its BTN or change the established hunting sequence, the customer is required to change the DSL service from the existing line to a "stand alone" line. The customer has the option to



cither migrate the DSL service to an existing stand alone line or install a new line onto which the DSL will be added. The process to migrate the DSL service to the stand alone line is yet another grueling, frustrating process through which the customer must wade. Customers have been quoted migration charges anywhere from \$0 up to \$300 by BellSouth Retail. This variance seems to be a matter of how the BellSouth's Retail representative interprets the customer's request. Birch has found that sometimes a disconnect order to remove the DSL from the existing line completes prior to the new connect is processed to install the DSL on the stand alone line. Predictably, in this situation, the customer experiences a lapse in its DSL service. Again, understandably, the customer questions whether the hassle to migrate the DSL is worth it.

**C. How BellSouth has “Addressed” Birch’s DSL Issues**

BellSouth's repeated attempts at solving this problem have seen much activity and iterations and no solutions -- for eight months now. Birch first presented its DSL issues to its BellSouth Account Team on May 14, 2001. The Account Team informed Birch that its issues were retail in nature and that the customers should escalate to a Retail supervisor when necessary. In the meantime, the Account Team directed Birch to send examples of the DSL issues as they occurred in order for the Account Team to investigate the situation. In July 2001, Birch escalated the DSL issues to its BellSouth Account Team Director. It was at that point that Birch was directed to call BellSouth's Retail DSL division jointly with the customer. In some instances BellSouth Retail would engage with the customer while Birch was on the phone, in other instances they would not.

Birch next engaged with other UNE-P CLECs to uncover what their experience had been in attempting to convert a customer from BellSouth who had DSL on its account. All

CLECs polled seemed to be in agreement that if the customer claimed they did not have DSL on their account, the winning CLEC would drop the phantom USOC at conversion. Birch proceeded to submit 5 LSRs and attempted to drop the USOC during the submission process. Three of the five LSRs were clarified back to Birch with the following: "1000 – ADSL not compatible with UNE Combo." Birch escalated these clarifications to supervisors, two of whom indicated that Birch had received invalid clarifications, and others who confirmed the clarification was correct. It is clear that this entire process is confusing at the very least, even to BellSouth.

On September 25, 2001, Birch formally opened its DSL issues at the UNE-P User's Group, the goal of which was to uncover what the proper procedures were for dropping the DSL USOC at the time of conversion. Birch submitted examples to BellSouth, at its request. On October 11, 2001, BellSouth indicated that the LSR should be clarified back to the CLEC and advising the CLEC that ADSL is not compatible with the UNE-P product. Birch and other CLECs then requested direction on handling these types of issues, to which BellSouth concluded that these issues were really retail in nature. Thus, according to BellSouth, their wholesale organization's hands were tied with respect to finding a resolution for CLECs. Birch was left wondering if neither its Account Team nor the User Group could offer a solution, who in BellSouth could? BellSouth concluded the October meeting with the agreement to take the issue off-line until the next meeting.

On December 6, 2001, BellSouth indicated to Birch that BellSouth Retail would have to be contacted in order to remove the DSL USOC prior to conversion. BellSouth also indicated that the ADSL USOC is present on the CSR as a provisioning USOC only, thus substantiating Birch's claim of a "phantom" USOC. Interestingly, BellSouth also confirmed

that it was not “priming” its accounts by adding the phantom USOC.<sup>40</sup> BellSouth next directed the CLEC to call a toll free BellSouth Retail number and select a specific option to identify the DSL provider who provides DSL service associated with a particular account, thereby enabling the customer to contact the appropriate provider to remove the DSL. Again, this process was ineffective, as BellSouth’s Retail representatives were always not willing to share the required information with the CLECs. This, of course, is no surprise.

On January 4, 2002, Birch’s BellSouth Account Team was changed, but it was agreed that Birch’s prior Account Team manager would continue working the DSL issues identified by Birch. On January 24, 2002, Birch submitted a Change Request (CR 625) to Change Control that requests a mechanical process be implemented to drop the DSL USOC at the time of conversion. The status of Birch’s Change Request is “pending.”

On February 5, 2002, BellSouth implemented a temporary manual process to deal with the DSL issues for Birch to trial.<sup>41</sup> Although Birch appreciates BellSouth finally developing some interim process, it has proven to be cumbersome, incomplete and ineffective so far. Of the 18 issues Birch has submitted to date, 16 have BellSouth’s DSL service on the account – the remaining 2 have DSL service through a provider other than BellSouth. Two of the 16 accounts have now had disconnect orders placed for the DSL, but the original request by the customer for removal on these two accounts was “hung up” in BellSouth’s back office systems. The remaining 14 examples are being investigated by BellSouth and discussed between Birch and BellSouth.

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<sup>40</sup> See January 3, 2002 Press Release of BellSouth Communications Corporation: BellSouth Corp. (NYSE: BLS) today announced that it has nearly tripled its DSL customer base with 620,500 customers in 63 total markets. This marks an increase of 405,500 customers in 2001, which represents a growth rate of 188%, the highest of any DSL or cable provider in the country. The success of this initiative is largely due to BellSouth’s focus on customer service and its execution of the most aggressive DSL deployment strategy in the industry, increasing the company’s potential customer base from 45% to 70% of households in the markets that BellSouth serves.

<sup>41</sup> Attachment 7 contains the temporary manual process implemented by BellSouth.

Birch appreciates the Commission's indulgence to allow the preceding lengthy dissertation on BellSouth's proposed solutions to the DSL problems described above and experienced by Birch. It is unfortunate that the process has been so lengthy and to date, and that no effective, scalable resolution has been offered or implemented by BellSouth. At the risk of sounding repetitive, Birch offers the preceding dissertation as yet another example of BellSouth's inability to effectively resolve CLECs' problems in a timely fashion. As a result of the customer hassle involved with the type of accounts described here, Birch's sales organization consistently walks away from prospective customers who have DSL on their accounts, phantom or otherwise, because no effective solution has been implemented since May 2001. As can be attested by the UNE-P User Group, Birch is not the only CLEC who experiences the DSL issues described herein. Birch's concerns are furthered, as should this Commission's be, that Birch has earnestly attempted to utilize the avenues offered by BellSouth, including its BellSouth Account Team, Change Control and the UNE-P User Group, all to no avail. Again, if these avenues are ineffective in a pre-271 environment, Birch has zero confidence that any sustainable improvements will be made in a post-271 environment. Surely, the Commission can see our point.

## **VII. CONCLUSION**

"Paper promises do not and cannot satisfy an RBOC's burden of proof."<sup>42</sup> And paper promises are the only basis of BellSouth's supplemental application. As Birch has stated many times previously to both BellSouth and to this Commission – give BellSouth's supposed improvements a chance to succeed. It would indeed be a very dangerous thing to grant 271 approval to BellSouth, when it has not shown this Commission any level of sustainable

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<sup>42</sup> *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20616, ¶ 55 (1997).

performance or improvement that will survive in a post-271 environment. While Birch truly believes that BellSouth is on a positive path toward earning 271 approval, its past history, and its patterns described herein, of inefficiencies and ineffective problem solving for Birch and other CLECs is a glaring reminder that BellSouth has yet to prove itself to this Commission as other RBOCs have.

Birch has no ulterior motive in these comments. That is, Birch has no desire to keep BellSouth out of the in-region interLATA market. Rather, Birch only seeks an operational environment that reflects a level playing field with its “vendor/competitor,” BellSouth. To date, Birch has not achieved a level of confidence that such an environment will exist in a post-271 world. Birch has commented on BellSouth’s corporate attitude many times. The reality is that unless and until there is regulatory pressure on BellSouth to implement effective solutions for CLECs in a timely fashion, and to provide consistent and verifiable data proving that BellSouth provides nondiscriminatory access to its OSS, BellSouth cannot be deemed to having adjusted its corporate commitments to doing so.

Birch sincerely appreciates all of the recent engagement by BellSouth to attempt to resolve Birch-specific issues. However, Birch remains fearful that such engagement will end when 271 approval is gained. There are no hard and fast mandates in place today to ensure that BellSouth will continue to engage with Birch or any CLEC beyond mid-May 2002. Birch again implores this Commission to scrutinize this supplemental application by BellSouth and recognize, as Birch has, that the brief interval taken by BellSouth between applications, is simply not enough to establish the proof this Commission has required of other RBOCs in other 271 proceedings.

WHEREFORE, Birch Telecom of the South, Inc. respectfully requests that the Commission consider these comments in its determination of this supplemental application.

**Redacted — For Public Inspection**

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gregory C. Lawhon", written over a horizontal line.

Gregory C. Lawhon

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